IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5199 of 2007()

CRIME NO. 408/07 OF CHERPU POLICE STATION

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PETITIONER/ACCUSED NO.1 & 2

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1. HARIKUMAR, AGED 32 YEARS, S/O. BALAN,
THEKKEPURAKKAL HOUSE, ETTUMUNA DESOM,
URAKAM VILLAGE, CHERPU, THRISSUR.

2. MRS. SUBITHA, AGED 28 YEARS,
W/O. HARIKUMAR, -DO- -DO-

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING SUB INSPECTOR OF POLICE,
CHERPU POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5199 of 2007

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Dated this the 12th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners are spouses. The defacto complainant, a woman, alleges that an incident took place on 30.7.2007, in which the second accused slapped her when she demanded return of money due to her. The first accused allegedly attempted to hit the defacto complainant by riding his motor cycle against her. The defacto complainant went to the doctor, who confirmed the fracture on the next day, i.e. on 31.7.2007. The complaint was filed long later on 7.8.2007 Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are on the face of it artificial and improbable. The delay in filing the complaint may be taken note of. According to the petitioners, what really happened was that there was a traffic accident. After the accident there was negotiation and bargaining. Unable to extract amounts which the defacto complainant had from the petitioners, she had belatedly conceived the idea of intentional

assault. In these circumstances the petitioners may be granted anticipatory bail, submits the counsel. He further submits that, at any rate, the second accused may be granted anticipatory bail, as even according to the allegations she had only slapped the defacto complainant with her hands. She cannot be attributed vicarious liability for what her husband allegedly did in the hitting of bike on her.

3. The learned Prosecutor fairly submits that the State has no objection against grant of anticipatory bail to the second accused, but contest the prayer for grant of anticipatory bail to the first accused. The theory of subsequent manipulation and raising of allegations later is not acceptable at all, submits the Prosecutor. The bottom is knocked out of this theory when one considers the fact that on the very next day the defacto complainant had gone to the doctor. She had alleged that she was intentionally assaulted by attempting to hit her with a running motor cycle.

4. I am satisfied that the second accused can be granted anticipatory bail. I do not find any features in this case, which would suggest or warrant the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the first accused. The petitioner/A1 may be directed to appear before the Investigator or the learned Magistrate

having jurisdiction and thereafter seek regular bail in the ordinary course.

5. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C. in favour of the second accused/wife.

(a) The petitioner/A2 shall surrender before the learned Magistrate on 19.9.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that she executes a bonds for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner/A2 shall make herself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 20.9.07 and thereafter as and when directed by the Investigating Officer in writing to do so.

(d) If the petitioner/A2 does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 19.9.06 and the police shall be at liberty thereafter to arrest the petitioner and deal with her in accordance with law.

(b) If the petitioner were arrested prior to her surrender on 19.9.2006

as directed in clause (1) above, she shall be released on bail on her executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 19.9.2007.

(R. BASANT)
Judge

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